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SUBJECT: UPDATE ON STATUS OF HISSENE HABRE II

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Classified By: CLASSIFIED BY CHARGE D, AFFAIRES JAY T. SMITH FOR REASONS  
1.4 (B) AND (D).

¶1. (SBU) On January 22, a delegation of judicial experts from the European Union (EU) concluded a series of discussions with the Government of Senegal on the ways and means to prosecute former Chadian President Hissene Habre. While it seems that the discussions went well and that the GOS said the right things, it is our assessment that Habre is unlikely to be tried in Senegal in the near future, if ever. Senegalese President Abdoulaye Wade will likely prefer to take the slow route and defer real action to another day. Moreover, on January 25 the National Assembly ) no doubt with President Wade,s acquiescence ) failed to approve legislation that would make it possible for Senegalese courts to try someone for crimes committed outside of Senegal. End Summary.

#### The World Awaits Senegalese Justice

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¶2. (C) Senegal is slowly being forced into a corner by the international community and the African Union to put Habre on trial as soon as possible. Although this matter has been pending for 18 years due to claims that Senegal neither had the means nor the legal framework to try Habre, President Wade only relatively recently announced that Habre would be put on trial. As a result, he invited a team of judicial experts from the EU to receive advice on how best to go about setting up and managing a trial of this magnitude, a first for Senegal. The team, lead by Bruno Cathala, chief clerk at the International Criminal Court (ICC), held four days of discussions with various government agencies.

¶3. (C) In their briefing to the international diplomatic community, the EU legal team characterized their meetings as successful, emphasizing the Senegalese Government,s cooperation. They met with officials from the Ministries of Foreign Affairs, Justice, and Finance; the judiciary, as well as representatives of civil society and Habre,s lawyers. At the MFA they were told that President Wade wanted this trial to go forward and that Foreign Minister Cheikh Tidiane Gadio would go to Addis Abba to discuss the trial with African Union (AU) officials to explore having a non-Senegalese magistrate serve as one of the judges. According to judicial officials, finances were needed to build a new courthouse to conduct the trial. More importantly, articles 9, 62, 92, and 95 of Senegal,s constitution needed to be amended to permit the modification of the criminal code and grant Senegalese courts jurisdiction over the crimes and to have this jurisdiction applied retroactively. Representatives from civil society underlined the importance of moving quickly to trial, warning that delays would tarnish Senegal,s image. Budget analysts from the Ministry of Finance said that it was

vital to determine how much the trial would cost, that each line item needed to be carefully considered and that who would pay what must be determined beforehand. The EU team described the &budget people8 as being serious and speaking for the GOS.

¶4. (C) The EU legal team leader Cathala then identified a number outstanding issues, including the timeline of the trial, putting measures in place to protect the witnesses, security at the courthouse, support and training for the judges, the appointment of a single Senegalese interlocutor with the full authority to manage Habre,s trial, the method the GOS will use to disseminate information about the trial, and the budget. President Wade has been quick to emphasize that this will be a Senegalese trial, presided over by Senegalese judges. Cathala also admitted that the outstanding problems are numerous and complex enough that he does not expect the trial to begin until at least 2009. In the meanwhile, the GOS can use any number of avenues to delay the trial. For example, Cathala mentioned that the Senegalese judicial authorities thought that each witness needed to be allocated 30 hours for depositions whereas he thinks that four is more than enough for a case of this kind.

#### Establishing Jurisdiction

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¶5. (C) In spite of Cathala,s optimism, on January 26 the National Assembly rejected a bill to amend Senegal,s constitution that would make it possible for Senegalese courts to try someone for crimes committed outside of Senegal. Without such legislation, Habre cannot be put on trial. The leader of the opposition to the proposed

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amendment, Deputy El Hadj Diouf, who served as one of Habre,s lawyers before becoming a deputy, argued that passage of the bill would make any law in Senegal retroactive and that this would plunge the country into chaos. However, given that very little happens in the National Assembly without President Wade,s blessing, it is all but certain that he orchestrated the vote.

#### Comment and Analysis

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¶6. (C) While President Wade has publicly stated that he wants this trial to occur it is our analysis that he will be content to let delays drag out if they ensure that the trial does not happen under his watch. As an avid promoter of pan-Africanism, President Wade recently lent his unequivocal support to Zimbabwean President Robert Mugabe during an AU/EU summit in Lisbon. This trial, while having the support of the AU, would set what many African leaders would consider a dangerous precedent; any number of African leaders could one day find themselves in the docket. The aging Wade is unlikely to be willing to go down in history as the first African president to put another one on trial. Tellingly, the National Assembly -- which is completely controlled by the president and his allies and typically rubber stamps his every desire -- rejected a bill that would make it possible to try Habre.

¶7. (C) Another key problem remains the carrot and stick. While the EU is dishing out plenty of carrots, such as agreeing to support the construction of a Judicial Center and training for judges, the stick does not exist. Senegal does not fear that the United States or the EU will withhold financial assistance, development aid, or threaten other funding if this trial does not go forward. Therefore, President Wade does not perceive that he has anything to lose if Senegal fails to put Habre on trial.

¶8. (C) Finally, Habre, who is not in jail or under house arrest, continues to enjoy the support of many influential

political, legal and religious personalities. In addition to Deputy Diouf, Habre enjoys the support of Minister of Mines and Industry Madicke Niang and former Minister of Justice Doudou Ndoeye, both of whom also have served on his legal team and is close friends with the current Minister of Justice Cheikh Tidiane Sy. Moreover, Habre is a member of the powerful Tidjani Muslim brotherhood which has considerable influence in Senegal. End Comment and Analysis.

19. (U) Visit Embassy Dakar,s SIPRNET website at <http://www.state.sgov.gov/p/af/dakar>.  
SMITH